IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 717.

AMERICAN BANK & TRUST COMPANY, *et al.*,
Appellants,

against

FEDERAL RESERVE BANK OF ATLANTA, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR APPELLEES.

History of the Case.

This is an appeal from a decision of the United States Circuit Court of Appeals for the Fifth Circuit, affirming a decree entered by the District Court of the United States for the Northern District of Georgia on March 25, 1922, denying a petition for an injunction, except as to certain minor matters, against the appellees, defendants below.

These proceedings were instituted by certain so-called country banks created under the laws of the State of Georgia. The bill herein was

filed in January, 1920. A demurrer to the bill was argued orally before the District Court for the Northern District of Georgia in March, 1920, and on April 29, 1920, the District Court entered an order dismissing the complaint for want of equity. That decree was subsequently affirmed by the Circuit Court of Appeals for the Fifth Circuit on November 19, 1920 (269 Fed. 4). Upon appeal to the Supreme Court of the United States, the decree of the District Court was reversed on May 16, 1921, and the case remanded for trial on the merits (256 U. S. 350). An answer was filed on July 5, 1921, and on January 9, 1922, the case came on for trial. Evidence was introduced by both parties, and on March 11, 1922, the District Court filed a written opinion containing its findings of fact and conclusions thereon (280 Fed. 940), which on appeal was affirmed by the Circuit Court of Appeals (284 Fed. 424). The question presented on this appeal is whether the appellants, in view of the evidence submitted at the trial, are entitled to relief at the hands of a court of equity.

When the case was before this Court on demurrer (256 U. S. 350), the Court, in overruling the demurrer, rested upon the specific charge that the defendants intended, in the words of Mr. Justice Holmes, "to accumulate checks upon the country banks until they reached a large amount and then to cause them to be presented for payment over the counter or by other devices detailed to require payment in cash in such wise as to compel the plaintiffs to maintain so much cash in their vaults as to drive them out of business or force them, if able, to submit to the defendants' scheme." This is the one specific

act alleged which this Court condemned and which led Mr. Justice Holmes to remark that "this sort of warfare upon legitimate creations of the States" is not sanctioned by federal statute. This is clearly evidenced by the statement in the paragraph preceding that "to determine whether they are authorized to follow that course it is not enough to refer to the general right of a holder of checks to present them, but it is necessary to consider whether *the collection of checks and presenting them in a body for the purpose of breaking down the plaintiffs' business as now conducted is justified by the ulterior purpose in view.*" (Italics ours.)

The case reduces itself, therefore, solely to a question of motive. Are the defendants inspired by "disinterested malevolence" against the plaintiff banks? Do either their objects or their methods give evidence of a design to inflict gratuitous injury upon the plaintiffs, in default of the plaintiffs' submission to the defendants' will?

Statement of Facts.

The controversy which gave rise to this litigation grew out of an attempt on the part of the Federal Reserve Bank of Atlanta to put into effect the universal collection of checks at par throughout the Sixth Federal Reserve District, which embraces the States of Georgia, Florida and Alabama, and parts of the States of Tennessee, Mississippi and Louisiana. The record shows that for some time past the country banks in the Sixth District have been accustomed to deduct so-called "exchange charges" from the face amount of checks drawn upon them by their depositors

and received through the mails for payment. These "exchange charges" amount to ⅛ or 1/10 of 1% of the face amount of the checks presented, with a minimum of 10 cents per item (R., 138, 141, 150, 168), and ostensibly are exacted to cover the cost of remission (R., 153). The charge in question is entirely distinct from the interest charge assessed by the bank *receiving the check for deposit*, which latter charge is imposed where immediate credit is given the depositor and represents an interest charge on the money advanced during the time the check is in process of collection (R., 181, 312). These interest charges are not involved in this suit.

Some time in June, 1916, the Federal Reserve Board at Washington, in accordance with the directions contained in the provisions of the Federal Reserve Act (C. 6, §13, 38 Stat. 263; amended March 3, 1915, C. 93, 38 Stat. 958; September 7, 1916, C. 461, 39 Stat. 752; and June 21, 1917, C. 32, §§4, 5, 40 Stat. 234, 235), inaugurated a policy of universal par clearance of checks, that is, it directed the several Federal Reserve Banks to act as clearing houses for their member banks and to undertake the collection at par of all checks received for collection (R., 75, 211). The policy of universal par clearance was inaugurated by the Federal Reserve Board at Washington, but the methods by which the plan was to be carried into effect in each district were left entirely to the respective Federal Reserve Bank of that district (R., 205, 209, 296, 301).

Preliminary Measures Adopted.

In accordance with this policy the Federal Reserve Bank of Atlanta undertook to institute the

universal par clearance of checks in the Sixth District. About May or June, 1919, letters were written to all the non-member banks in the Sixth District which theretofore had not agreed to remit at par, in which the advantages of par clearance were courteously pointed out to the bank in question and it was urged to join the vast army of state banks which were then remitting at par. The preliminary measures adopted are set forth in the defendants' answer to Interrogatory No. 63 (R., 211) as follows:

> "The Federal Reserve Board, under the provisions of Sections 13 and 16 of the Federal Reserve Act, directed the Federal Reserve Bank of Atlanta to act as a clearing house for its member banks. Pursuant to this direction and acting in accordance with the provisions of the Federal Reserve Act, the Federal Reserve Bank of Atlanta undertook to collect at par for its member and clearing member banks all checks on banks within the Sixth Federal Reserve District. The non-member banks of the Federal Reserve Bank of Atlanta were advised of the purpose of the Federal Reserve Bank of Atlanta, and were courteously and respectfully requested to remit for checks sent them for collection without the exaction of so-called 'exchange charges', full explanation being made to such banks of the fact that, under Section 13 of the Federal Reserve Act, the Federal Reserve Bank could not pay exchange charges. The banks in question were further advised that, if they would voluntarily remit for checks sent them without exacting 'exchange charges', the Federal Reserve Bank of Atlanta would stand the cost of postage and would absorb the shipping charges, in case they preferred to send currency. They were also invited to open a

clearing account with the Federal Reserve Bank of Atlanta under the provisions of Section 13 of the Federal Reserve Act, as amended, as a result of which they would enjoy the same collection privileges as a regular member bank. A large number of the banks in the Sixth Federal Reserve District which were not members of the Federal Reserve Bank of Atlanta, voluntarily agreed to remit for checks sent them for collection without the exaction of so-called 'exchange charges.' Many of such banks, however, were not willing, for one reason or another, to remit for such checks without exacting so-called 'exchange charges'. In such cases the Federal Reserve Bank of Atlanta was compelled to resort to other lawful methods of collecting such checks, in order to render the required service to its member banks, but before any general plan could be put into effect, the restraining order in this suit was issued."

Thus the defendant bank did everything in its power by courteous and friendly request to persuade the non-member banks in its District to remit at par before considering other methods of collection.

However, as a number of the state banks persisted in refusing to remit at par through the mails, it became incumbent upon the officers and directors of the Federal Reserve Bank of Atlanta, in accordance with what they conceived to be their legal duty, to attempt to collect at par checks drawn on such banks in some other lawful way than by presentation through the mails. Before a definite plan had been decided upon, however, this suit was instituted and a temporary injunction issued, staying the hands of the officers of the bank from further action. Various

methods of presenting the checks for payment at the counter were discussed from time to time, but as there was no real reason for deciding upon a final scheme with the temporary injunction in effect, it is quite natural that the officers were leisurely in reaching their conclusion.

The Plan Adopted.

Subsequently, however, a definite plan was formulated. The plan is set forth in the defendants' Answer to Interrogatory No. 6 (R., 200), as follows:

> "In case a non-member state bank should not be willing to remit in available exchange at par through the mails for checks sent by the Federal Reserve Bank of Atlanta through the mails for payment, the Federal Reserve Bank, in order to collect such checks in the only other method available, would forward the checks as and when received, without accumulation and in the regular course of business, to an agent or agents located in the same town as the bank on which such checks were drawn, or would send one of its own representatives with the checks in question to such town, such agent to be instructed immediately to present the checks across the counter for payment either in the usual exchange at par or in cash for the full amount thereof, at the option of the drawee bank. In case the drawee bank refused to pay such check either in such exchange at par or in cash, the agents were to be instructed to have the check protested for non-payment and thereafter return the check to the Federal Reserve Bank of Atlanta."

The defendants, without waiving the right of collection in cash, a right which pertains to

every holder of a check, have testified that they will be willing to accept at par the same kind of exchange which they accept from banks which voluntarily agree to remit at par, namely, exchange drawn by a solvent bank upon a solvent bank which is collectible at par (R., 182, 183, 186).

The Par List.

The par list is a compilation of the names of cities and towns, checks on banks in which the several Federal Reserve Banks are ready to collect at par (R. 348). In some instances the name of the individual bank is inserted, but in either event the par list is merely a means of announcing that the banks included therein are banks checks on which the Federal Reserve Bank will undertake to collect at par. The par list contains no representation whatever touching the attitude of the listed banks, but refers only to the functions which the Federal Reserve Bank is prepared to perform (R. 288).

The par list is printed and published as one document by the Government Printing Office at Washington, but the names of the cities or banks in each district included within it are furnished by the Federal Reserve Bank of the particular district and can be changed only by and at the direction of the respective Federal Reserve Banks. The Federal Reserve Board at Washington has nothing to do with the preparation of these lists. (R., 179, 288)

Accumulation of Checks.

There is no evidence whatsoever of an accumulation of checks for presentment in a body, or of any intended accumulation. The accumulation of checks means the withholding of checks for a period of time before presentment (R., 181-2). The convergence of checks at one point and the daily presentation thereof in the regular course of business does not and cannot constitute an accumulation of checks within the meaning of that term as used in banking practice. (R., 181-2).

Mr. Monroe of the Quincy State Bank, a witness for the plaintiffs, testified that on February 12, 1920, one Hunter, an agent of the express company, presented to the Quincy State Bank for payment a large number of checks, about one hundred in all and amounting in the aggregate to $27,616.86, and that on the day following another batch of fifty or sixty checks was presented for payment (R., 169). In connection with this incident, however, Mr. Adelson, Deputy Governor of the Federal Reserve Bank of Atlanta, testified (R., 176-7), as follows:

> "The Jacksonville Branch was operating under my direction at that time. I think about January 31st it was when the Jacksonville Bank sent a cash letter to the Quincy State Bank with the explanatory letter from that branch stating that it could not pay exchange, and requesting a remittance at par, but if they were not willing to remit at par to return the items. On February 5th, 1920, I think it was, in a letter signed N. B. Jordan, Cashier of the Quincy State Bank—anyway, three cash letters which had been similarly sent to the Quincy State Bank were returned, which obviously had been an

> accumulation of several days *and which was held up by them.* We had incurred some liability, after they had been held up by that bank by reason of their being in suspense, and when they were returned to the Jacksonville Bank they were instructed to turn them over to the express company for collection without any specific instructions as to how payment was to be made. There was no design to accumulate them for the purpose of embarrassing the Quincy State Bank."

It is obvious that whatever accumulation occurred was occasioned by the action of the Quincy State Bank. Elsewhere in the record, both Governor Wellborn and Mr. Adelson testified explicity that the Federal Reserve Bank of Atlanta never accumulated nor ever intended to accumulate checks (R., 177, 186).

Ulterior Motives.

Nor does the evidence disclose any ulterior motive on the part of the officers or directors of the defendant bank. On the contrary, it is quite evident that both the officers and directors have acted, and intend to act, with the greatest consideration for the welfare and in the interests of the complaining banks. Mr. Tumlin, a witness for the plaintiffs, testified that the officers of the Bank were actuated only by the desire to do their duty and to follow what they believed to be the law (R., 156), while the officers themselves, on their corporal oaths, stated unqualifiedly that their sole and only purpose was to render to their member banks the service of collecting checks at par, as contemplated by the provisions of the Federal Reserve Act (Ans. to Interrogatory No. 62, R., 211).

It appears that in connection with the collection of checks at Dotham, Ala., the Dotham Bank resorted to all kinds of devices to inconvenience the Federal Reserve Bank of Atlanta when called upon to pay checks presented over its counter. Among other things, it got together all sorts of worn-out and torn currency which it used in payment of the checks (R., 184) and after this supply was exhausted, it paid the checks in currency which it indirectly obtained from the Federal Reserve Bank of Atlanta through the medium of a member bank located in Dotham (R., 184). This device was brought to the attention of the directors of the Federal Reserve Bank of Atlanta, yet they voted to continue to supply the member bank with what currency it asked for (R., 63, 184).

The Letter of December 23rd.

As for Governor Wellborn's letter of December 23rd, 1919, attached as "Exhibit B" to the complaint and over which the plaintiffs raised such a storm of protest, it is clear from Governor Wellborn's testimony that he had not the slightest intention to convey any threat, nor did he ever conceive that it would be taken in that sense (R., 195). In fact, he was much surprised and perturbed when the matter was brought to his attention (R., 195).

The Attitude of Plaintiffs.

The real reason for the institution of this suit is the reluctance on the part of the plaintiff banks to forego the exchange charges (R., 93). In or-

der to retain this revenue, they have charged all manner of illegal acts on the part of the defendant bank, apparently with no other purpose than so to tie the hands of the defendant bank that the plaintiffs may be permitted to continue to exact exchange charges. The plaintiffs have refused to agree to remit by mail at par and have elected to stand on their bare legal rights. Having taken that position, they now complain that the Federal Reserve Bank of Atlanta intends to show them no consideration but to go the limit in collecting checks across the counter in order to do them out of a few dollars a year. On the contrary, the evidence discloses that the Federal Reserve Bank of Atlanta has in the past, and proposes in the future, to show them every consideration and even now is prepared to give them the alternative of paying in exchange at par or in cash, rather than stand on its own bare legal rights as holder of checks payable on presentation and demand cash only, a medium which alone can discharge the obligation arising out of a negotiable instrument. In the last analysis, this is what the evidence of record discloses. It is admitted that the exchange charges are borne by the ultimate consumer, the people at large (R., 152). Nevertheless, the plaintiffs insist upon the right to retain such charges in much the same way as the spinners of old clung to their alleged right to employment when the cotton gin first came into being. It is a policy of obstruction, pure and simple; an attempt to exact a charge for a service which in reality is no longer rendered, as shown by numerous letters written by Governor Harding and introduced in evidence by the plaintiffs themselves. (See particularly letter to a United States Senator, dated April 1, 1920, R., 122.)

ARGUMENT.

In proposing to collect checks at par on all banks located within the Sixth Federal Reserve District, the Federal Reserve Bank of Atlanta is acting pursuant to and in furtherance of the express direction of Congress as embodied in the provisions of the Federal Reserve Act, as amended.

Quite apart from the provisions of the Federal Reserve Act, the several Federal Reserve Banks, as banks of reserve and deposit, have authority to accept for collection and to collect at par all checks deposited with them by member banks. Deposits received by banks are largely in the form of checks drawn upon other banks. It is therefore essential to the effective operation of any bank, particularly one acting as a reserve depository as does each Federal Reserve Bank, that it have power to collect checks deposited with it. Such a right has been recognized ever since the introduction of the check as a medium of exchange entirely aside from express provision of law, for a check is of no value as credit or otherwise unless and until it is collected and paid. It follows that all banking institutions, and more particularly those acting as reserve depositories, have authority to receive and collect all checks which are deposited with them, and, having accepted checks for collection, may, as the rightful holder thereof, demand payment for the full face amount without the deduction of any exchange charges, in the absence, of course, of any ulterior motive in so doing.

But, in order that there may be no question as to the existence of this power so far as the Federal Reserve Banks are concerned, Congress has expressly clothed the several Federal Reserve Banks with authority to accept for collection and to collect all checks payable upon presentation, whether drawn upon member or non-member banks, and at the same time has expressly prohibited the Federal Reserve Banks from accepting in payment for such checks an amount less than the full face value thereof.

(1)

The Federal Reserve Act authorizes the Federal Reserve Banks to accept for collection and to collect any and all checks payable upon presentation when deposited with them for collection.

The Federal Reserve Banks, under the provisions of Section 16 of the Federal Reserve Act, as amended, are required, upon the direction of the Federal Reserve Board, to exercise the functions of clearing houses for their member banks. Section 16, as at present drawn, provides in part:

> "The Federal Reserve Board * * * may at its discretion exercise the functions of a clearing house for such Federal Reserve Banks, or may designate a Federal Reserve Bank to exercise such functions, and may also require each such bank to exercise the functions of a clearing house for its member banks."

The Federal Reserve Board has notified the several Federal Reserve Banks that they will be

required to act as clearing houses for their member banks. It is a customary function of a clearing house to collect out of town checks received for clearance and collection and to remit the proceeds to the payee bank, as well as to cancel checks one against another. For years the Boston Clearing House Association has been accustomed to collect out of town checks drawn on all banks throughout New England, whether such banks were members of the Association or not, and the same is true with regard to such clearing houses as those operating in Kansas City, Nashville, Atlanta, Oklahoma City, St. Louis, New York, Richmond, Detroit and several other cities. (See "The Clearing House," by Jerome Thralls, pages 15 *et seq.*)

Moreover, having authorized the Federal Reserve Banks to act as clearing houses for their member banks when directed by the Federal Reserve Board, it is hardly conceivable that Congress intended to withhold from such banks the power to collect out of town checks received for collection, when such a power is so evidently essential to a successful national system of check clearance and collection.

Whatever may be the intention of Congress as contained in Section 16, however, Congress has expressly specified in Section 13 of the Act what checks the several Federal Reserve Banks may accept for collection and credit.

Section 13 of the Federal Reserve Act, as at present drawn provides in part as follows:

> "Any Federal Reserve Bank may receive form any of its member banks, and from the United States, deposits of current funds in lawful money, national bank notes, Federal

> Reserve notes, or checks, and drafts, payable upon presentation, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal Reserve banks deposits of current funds in lawful money, national bank notes, or checks upon other Federal Reserve banks, and checks and drafts, payable upon presentation within its district, and maturing notes and bills payable within its district; or, solely for the purpose of exchange or of collection, may receive from any non-member bank or trust company deposits of current funds in lawful money, national bank notes, Federal Reserve notes, checks and drafts payable upon presentation, or maturing notes and bills: *Provided*, Such non-member bank or trust company maintains with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal reserve bank."

The Act thus empowers the Federal Reserve Banks to receive from their member banks checks and drafts "payable on presentation." The phrase "payable on presentation" is unqualified. In the absence of words of qualification, or any intent to qualify, the authority conferred must include the right to accept checks and drafts drawn on non-member banks as well as upon member and clearing member banks.

The history of the legislation in question shows beyond a shadow of a doubt that this was the intent of Congress in drawing the Act as it appears at present. Originally this paragraph of Section 13 limited the authority conferred to the receipt of "checks and drafts upon solvent member banks." By the amendment of September

7th, 1916, the phrase "upon solvent member banks" was stricken out, so that the amended phraseology, which remains unchanged in this respect at present, contains simply the qualifying phrase "payable upon presentation," and nothing more.

Having a right to receive checks payable upon presentation irrespective of the class of banks upon which such checks are drawn, the Federal Reserve Banks must of necessity, as one of their incidental powers necessary to carrying on the business of banking conferred upon them by Section 4 of the Act, have the right to collect such checks, or otherwise the right to receive would be useless and ineffectual. A check is of no value as credit or otherwise unless and until it is collected and paid. The right to receive and collect checks is a right incidental both to the right to receive deposits and the right to act as a clearing house. All banking institutions, state and national, have universally exercised the right to collect checks as incident to their general banking powers and without any express authority in law. The Federal Reserve Banks are no exception to this general rule.

(2)

Checks received by Federal Reserve Banks for collection must be collected at par, since the Federal Reserve Banks are not permitted under the terms of the Federal Reserve Act to accept in payment of checks deposited with them for collection an amount less than the full face value thereof.

As noted above, the first paragraph of Section 13 authorizes the Federal Reserve Banks to re-

ceive from member banks, among other evidences of indebtedness, checks and drafts payable upon presentation, and soley for the purpose of exchange or of collection to receive from other Federal Reserve Banks checks and drafts payable upon presentation within its district, and solely for purposes of exchange or collection to receive from non-member banks and trust companies checks and drafts payable upon presentation, provided that such non-member banks maintain sufficient balances to offset items in transit, and then continues as follows:

> "*Provided, further*, That nothing in this or any other section of this Act shall be construed as prohibiting a member or non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; *but no such charges shall be made against the Federal Reserve Banks.*" (Italics ours.)

This last clause in italics effectively prohibits the Federal Reserve Banks from permitting the deduction of any discount in the way of "exchange charges" on any and all checks which they may receive for collection, whether such checks are drawn on member banks or clearing member banks, or on non-member banks. A careful analysis of that part of Section 13 quoted above shows that the phrase "no such charges" relates by reference to the term "reasonable charges" in the earlier part of the proviso, *i. e.*,

exchange charges. While the paragraph recognizes the right of member or non-member banks to impose exchange charges *inter sese*, it unqualifiedly prohibibts the Federal Reserve Banks from paying any such charges on any or all checks held by them for collection. This is the interpretation which invariably has been given to the proviso in question by every court which has undertaken to construe its meaning. See *American Bank & Trust Co.* v. *Federal Reserve Bank of Atlanta*, 269 Fed. 4; 280 Fed. 940; 284 Fed. 424; *Brookings State Bank* v. *Federal Reserve Bank of San Francisco*, 277 Fed. 430; 281 Fed 222; *Farmers, etc., Bank of Catlettsburg* v. *Federal Bank of Cleveland*, U. S. D. C. E. D. Ky., opinion rendered October 14, 1922 (unreported); *Farmers, etc., Bank* v. *Federal Reserve Bank of Richmond*, 183 N. C. 546; 112 S. E. 252.

The plaintiffs deny the correctness of such a construction, for, they say, since the Federal Government has no power to control the charges assessed by state banks for services rendered by them, Congress cannot be presumed to have intended the prohibition contained in this proviso to apply to state institutions which have remained outside of the Federal Reserve System. The major premise of this contention will not bear scrutiny. Congress, in the exercise of its undisputed constitutional powers, may unquestionably affect, and directly affect, the revenues of state institutions, and to that extent may and does exercise a form of control over the operation of state agencies. This principle was established many years ago by this court in the state bank-note tax case, *Veazie Bank* v. *Fenno*, 8 Wall, 533, and has been reaffirmed in a long line of cases since. It is clear that the creation of the Federal Re-

serve Banks lies within the undisputed constitutional realm of Congress. Congress may with equal freedom confer powers and prescribe limitations upon these its own creatures. It may as freely say that a Federal Reserve Bank shall not pay exchange charges on checks drawn on nonmember banks deposited with it for collection as say that a Federal Reserve Bank shall accept such checks for collection and collect the same. What effect such a limitation may have upon the revenue of state institutions cannot affect the validity of the limitation. It follows that the presumption for which the plaintiffs contend, namely, that Congress should not be taken to have intended the prohibition to apply against state institutions, has no persuasive force, particularly where, as here, the clear import of the words used does not justify such a restricted and forced interpretation.

It may be urged in the alternative that even if the proviso is not limited in effect as claimed, nevertheless, the proviso must be taken to prohibit a charge only when the Federal Reserve Bank owns for its own account the check held, and that if the Federal Reserve Bank is acting solely as agent for collection, the prohibition does not apply. But this interpretation does clear violence to the language used and to the intention of Congress as expressed in the Act. Sections 13 and 16, as amended, quite obviously contemplate a system of check clearance and collection. What Congress had in mind was the collection of member banks' checks through the Federal Reserve Banks. Thus, the clause in Section 13, "but no such charges shall be made against the Federal Reserve Banks", must be taken to apply whether

the particular check is owned by the Federal Reserve Bank for its own account or whether as agent for collection.

But, if the proviso in question is to be construed as the Federal Reserve Bank of Atlanta maintains, then, the plaintiffs contend, it must preclude a Federal Reserve Bank from incurring any expense whatever incidental to the collection of checks by agents at the counter. The limitation, however, obviously applies only to the technical exchange charges. From the context, it cannot refer to the expenses incurred in making collections at the counter. The Federal Reserve Banks unquestionably have authority to meet all necessary expenses incidental to their operations, and as the incurring of expense involved in the presentation of checks across the counter is not expressly prohibited by the Federal Reserve Act, the authority to incur such expense necessarily exists under the general authority to incur expenses in carrying on operations. Even if such authority did not exist, however, third parties, such as the plaintiffs, have no cause for complaint of such action. *American Bank & Trust Co.* v. *Federal Reserve Bank of Atlanta*, 269 Fed. 4, 10-11; *National Bank* v. *Matthews*, 98 U. S. 621; *Blair* v. *Chicago*, 201 U. S. 400, 450.

(3)

The dictates of sound banking require that if the several Federal Reserve Banks, in undertaking the collection of checks payable on presentation at par, are to render satisfactory and efficient service to their member banks, they must be prepared to accept for collection and to collect at par any and all checks deposited with them for collection.

Having the necessary authority, it is of course open to the Federal Reserve Banks to exercise such authority at will. There are, however, cogent considerations of policy which impel the Federal Reserve Banks to undertake the universal par collection of checks.

In the United States, the use of the check as a medium of exchange, both locally and at distant points, has grown enormously in recent years on account of its convenience and safety in settling business transactions. By the use of the check, debts may be readily settled at distant points expeditiously and without the danger and expense incident to the shipment of currency. Yet unless the check is universally freed from the imposition of exchange charges, which are in effect nothing more than an unwarranted tax upon its free circulation, the full usefulness of the check as a medium of exchange cannot be attained. With certain banks insisting upon an exchange charge while others will remit for the full amount of a check, a merchant who receives an out of town check in payment for goods sold must face the risk of undergoing a loss in the form of exchange charges, which are often impossible to foresee and

which are certainly very inconvenient and annoying when imposed. On the other hand, if all checks are universally collectable at par, the commercial interests of the country may rest assured that a check for $1,000 is worth $1,000 and not $999, or some lesser amount. Uniformly in the value of a circulating medium is essential to its full usefulness as such.

Universal par clearance will insure to the check a ready acceptance everywhere. Checks on small towns will be just as available as checks on large centers. Every check, irrespective of the bank or locality upon which it is drawn, should, in the interest of the entire country, represent available funds in the full amount of its face value. If the check collection system set up by Congress under the Federal Reserve Act is to meet properly the needs for which it was created, each Federal Reserve Bank must be prepared to accept for collection and to collect at par checks drawn upon all banks within its district. The value of the collection service rendered by any clearing-house is directly proportionate to the number of banks, checks on which may be collected through it. Even among the protesting non-member banks themselves, the desirability of universal par clearance is recognized. In a letter dated December 30, 1919, to the Federal Reserve Bank of Atlanta, offered in evidence by the plaintiffs (R., 88), Mr. E. M. Moore, President of the Merchants and Farmers Bank of Roanoke, Ala., said:

> "To get down to real facts, we are ready to remit at par for our checks when we can clear everything at par, * * *. There is no doubt but that every check in this country should be remitted at par, and I trust to see this in effect soon."

Moreover, the imposition of exchange charges constitutes a serious and unwarrantable burden upon the commerce of the country as such. It has been estimated that the amount of exchange charges which the commerce of the country would have to bear in case the usual exchange charges were assessed upon all out of town checks would amount in a year, in round figures, to some $135,000,000 (R., 124-5). The dictates of sound banking and far seeing policy clearly require that such a condition as this should not be allowed to continue, as it most assuredly will unless the par clearance plan of the Federal Reserve Bank is upheld.

II.

The method of check collection which the Federal Reserve Bank of Atlanta proposes to adopt is entirely legal both in respect to the means employed and the end in view, and consequently plaintiffs have no ground for complaint.

(1)

The means to be employed and the ends in view are legal.

There are only three ways in which the holder of a check, whether an individual or a corporation, may lawfully and properly collect it, (1) he may present it in person over the counter of the drawee bank for payment; (2) he may forward it to an agent more conveniently located geographically for the purpose of presentation

through that agent to the drawee bank over its counter for payment; or (3) he may forward it through the mails direct to the drawee bank for payment and remission through the mails in cash or exchange.

The third method is the method which the defendants customarily adopt in collecting checks. Only in cases where the drawee banks themselves compel the Federal Reserve Bank of Atlanta to adopt one of the other two methods on account of their refusal to remit through the mails at par does the Federal Reserve Bank of Atlanta propose to collect checks by presentation at the counter. Under the circumstances, this is the only course open to it if it is to render the service which the Federal Reserve Act contemplates.

The defendants emphatically maintain that they, as the lawful holder of checks received for collection and credit, would be acting entirely within their legal rights if they should insist upon payment in cash only when presenting checks across the counter, in the absence, of course, of any ulterior motive to injure or coerce the banks in question; particularly when they are driven so to present such checks by the refusal of the drawee banks themselves to remit in satisfactory exchange through the mails. A check payable on presentation, as the term denotes, is a negotiable instrument payable at sight and is dischargeable only by the payment of money. In receiving a check for collection and credit the defendant bank becomes the lawful holder thereof and acquires all the rights incident to ownership. As such the defendant bank, like any other holder of a negotiable instrument, has a right to insist that the check be discharged in the only way in which

it legally can be discharged, namely, by the payment of legal tender. It is this obligation which the drawee bank foresaw that it would be required to meet when it voluntarily accepted the deposit of the drawer of the check, and it is an obligation which the drawee bank must be prepared to meet when the check is properly presented to it for payment.

Out of consideration for the non-member banks, however, the defendants do not propose to insist upon their full legal rights in the premises, but rather to give to the drawee bank the alternative of paying in satisfactory exchange at par or in cash. While the defendants contend that they may legally demand cash only, nevertheless, the legality of the plan which they propose to adopt in this district must be tested in the light of the particular acts contemplated.

Under this plan, checks drawn upon non-member banks will be forwarded, *as and when received, without accumulation and in the regular course of business*, to an agent located in the town in which the bank upon which the check is drawn is located, or the check will be turned over to one of the representatives of the defendant bank, who will proceed to present the check across the counter for payment in full, either in satisfactory exchange or in cash. If payment at par is refused, the checks will be protested for nonpayment and returned to the owner thereof. The sole purpose contemplated is to establish universal par clearance throughout the Sixth Federal Reserve District, a course of action which Congress has expressly sanctioned.

There is no possible element of coercion or duress in the acts proposed. No discrimination

will be made between banks which willingly agree to remit at par through the mails and those which refuse so to remit at par. In either case, the Federal Reserve Bank of Atlanta stands ready and willing to accept satisfactory exchange or cash in payment of its cash items presented for payment. The fact that an objecting non-member bank, for some reason of its own, refuses to pay in satisfactory exchange, and so is under the necessity of paying in cash, is not the affair of the Federal Reserve Bank of Atlanta; nor can any coercion or duress be spelled out of this action.

Nor will the exercise of a right, the result of which may compel a third party to forego certain profits which it has been accustomed to make, amount to coercion or duress. *Allis-Chalmers Co. v. Iron Moulders Union No. 125*, 150 Fed. 155, 171; *National Fireproofing Co.* v. *Mason Builders Assn.* (C. C. A.), 169 Fed. 259; *State* v. *Huegin*, 110 Wisc. 189, 85 N. W. 1046; *Ricker* v. *Railway*, 90 Me. 395, 38 Atl. 338.

In *Ricker* v. *Railway, supra*, an old case, perhaps, but one which shows how deeply rooted this principle is in our law, and one which excellently illustrates the point in question, the proprietors of a hotel had been accustomed to provide stage transportation to all patrons from a railroad junction several miles away to the hotel. Subsequently, a railroad was built between these two points and a station established near the hotel. It was held that the hotel proprietors had no cause of action against the railroad for the loss of patronage; that the railway was exercising an undoubted right in extending its tracks as it did; and that the fact that the hotel people were compelled as a consequence to forego the profits de-

rived from their stage did not give them a cause of action. Similarly, the fact that the plaintiff banks must forego exchange charges under the proposed plan of check collection will not make the acts unlawful.

(2)

There is no ulterior motive in fact.

The plaintiffs charge (1) an accumulation of checks until the aggregate is a large amount and the sending of special messengers to demand payment in currency; (2) generally, "financial violence, fear, intimidation and oppression"; (3) the returning of checks drawn on non-assenting banks as dishonored before being presented for payment; (4) derogatory notations on such checks affecting the credit of the drawee bank; and (5) slander or attacks upon the credit or standing of non-member banks.

It is not deemed necessary to review the evidence of record in detail. It is sufficient to say that there is not a scintilla of evidence in the case substantiating any of the foregoing charges. The Trial Court specifically found this to be the fact. It said in part (R. 350):

> "6. In the inauguration of its par clearance system, I find that the Federal Reserve Bank of the Atlanta District was not inspired by any ulterior purpose to coerce or injure any non-member bank which refused to remit at par. Specifically, I find that the charge that the Federal Reserve Bank at Atlanta would accumulate checks upon country or non-member banks until they reach a large amount, and then cause them to be presented for payment over the counter, so

as to compel the plaintiffs to maintain so much cash in their vaults as to drive them out of business, as an alternative to agreeing to remit it at par, is not sustained by the evidence.

7. I find the evidence insufficient to sustain any charge in the bill that the Federal Reserve Bank was acting illegally or exercising any right it had so as to oppress or injure the plaintiff banks."

In this regard the Circuit Court of Appeals said (284 Fed. 424, 426):

> "The record before us does not warrant the setting aside of either of those findings. We do not think that the evidence adduced justified the granting of any of the prayed-for relief which was denied by the decree appealed from."

These findings of fact in the opinion of the Trial Court are incorporated in the 6th, 7th and 8th paragraphs of the decree (R. 351-2).

The plaintiffs have raised a storm of protest over certain alleged statements with regard to "annoying, expensive and embarrassing" methods of collection. If a depositor in one of the plaintiff banks should draw a check on his bank for $100,000 and present that check for payment across the counter, its payment would no doubt be annoying, expensive and embarrassing to the drawee bank, yet such a fact would certainly not excuse the drawee bank from paying the check. This is a chance which every bank must foresee in accepting deposits. The mere fact that a certain course of action may prove annoying, expensive and embarrassing does not neces-

sarily mean that such a course of action is unlawful, nor that the party proposing to adopt such a course of action is impelled by any ulterior motive.

(3)

There is no want of just cause or excuse.

It may be that under the modern law of torts acts otherwise lawful may be rendered unlawful by the existence of malice in law. Malice in law is quite distinct from bad motive or specific intent to injure. It means nothing more nor less than the absence of just cause or excuse. *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229; *Bitterman* v. *Louisville, etc., R. R. Co.*, 207 U. S. 205, 223; *Aikens* v. *Wisconsin*, 195 U. S. 194, 204; *National Fireproofing Co.* v. *Mason Builders Association* (C. C. A.), 169 Fed. 259, 265; *Pickett* v. *Walsh*, 192 Mass. 572, 78 N. E. 753; *Plant* v. *Woods*, 176 Mass. 492, 57 N. E. 1011; *Brennan* v. *United Hatters*, 73 N. J. L. 729, 65 Atl. 165; *W. Va. Transportation Co.* v. *Standard Oil Co.*, 50 W. Va. 611, 624, 40 S. E. 591, 597; *McCauley* v. *Tierney*, 19 R. I. 225, 37 L. R. A. 455; *Palatine Ins. Co.* v. *Griffin* (Tex. C. C. App. 1918), 202 S. W. 1014.

In *Hitchman Coal & Coke Co.* v. *Mitchell*, *supra* Mr. Justice Pitney said:

> "As Bowen, L. J., justly said in the Mogul SS. case, L. R., 23 Q. B. Div. 613, 'Intentionally to do that which is calculated in the ordinary course of events to damage, and which does, in fact, damage another in that other

> person's property or trade, is actionable if done without just cause of excuse'. And the intentional infliction of such damage upon another, without justification or excuse, is malicious in law."

In *McCauley* v. *Tierney*, *supra*, the Court said in part:

> "Injury, however, in its legal sense, means damage resulting from a violation of a legal right. It is this violation of a legal right which renders the act wrongful in the eye of the law and makes it actionable. If, therefore, there is a legal excuse for the act, it is not wrongful even though damage may result from its performance."

Whether just cause or excuse exists in a given case depends upon the specific facts in the particular case. As Mr. Justice Holmes expressed it in *Aikens* v. *Wisconsin*, *supra* (p. 204):

> "It has been considered that, *prima facie*, the intentional infliction of temporal damage is a cause of action, which, as a matter of substantive law, whatever may be the form of pleading, requires a justification if the defendant is to escape. *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598, 613; S. C. (1892) A. C. 25. If this is the correct mode of approach it is obvious that justifications may vary in extent according to the principle of policy upon which they are founded, and that while some, for instance, at common law, those affecting the use of land, are absolute, *Bradford* v. *Pickens*, (1895) A. C. 587, others may depend upon the end for which the act is done."

It is clear, for instance, that business competition as such negatives malice in law. *Brennan* v. *United Hatters*, *supra*; *Picket* v. *Walsh*, *supra*;

Plant v. *Woods, supra; W. Va. Transportation Co.* v. *Standard Oil Co., supra.* Similarly, just cause or excuse exists where the acts complained of are done legitimately in the furtherance of the right to bargain for one's labor. *Allis-Chalmers Co.* v. *Iron Moulders Union No. 125, supra; National Fireproofing Co.* v. *Mason Builders' Assn., supra.* Nor will malice be imputed where the acts complained of are for the public good, even though the plaintiff may be injured thereby, *McKee* v. *Hughes*, 133 Tenn. 455, 181 S. W. 930.

The Federal Reserve Bank of Atlanta, in attempting to put into effect the plan proposed, is simply carrying out the will of Congress and endeavoring to institute a banking reform in the interest of the public at large. It can hardly be said that steps taken pursuant to an act of Congress and in an endeavor to carry out its will are done without just cause or excuse, particularly when the interests of the general public will be so evidently furthered by the institution of the proposed course of action.

The mere fact that some loss may be occasioned as a result of the execution of the plan does not negative the existence of just cause or excuse. *Hitchman Coal & Coke Co.* v. *Mitchell, supra; Allis-Chalmers Co.* v. *Iron Moulders Union No. 125, supra; National Fireproofing Co.* v. *Mason Builders Association, supra; MaCauley* v. *Tierney, supra.*

III.

The defendants are entitled to a dismissal of this appeal.

(1)

The plaintiffs entirely failed in their proof either of unlawful methods or ulterior motives.

It is unnecessary to repeat what has heretofore been said as to the state of the evidence on these points.

(2)

The evidence entirely negatives any past or prospective abuse by the defendants of their right to demand payment in cash. The lawful exercise of this undoubted right cannot be forbidden.

As stated heretofore, a check payable upon presentation is a negotiable instrument which is dischargeable only by the payment of money. An injunction enjoining the Federal Reserve Bank of Atlanta from presenting checks received for collection over the counter of the drawee bank and demanding cash would directly violate not only the contract right which the Federal Reserve Bank of Atlanta possesses as holder of the check, but also the contract right of the drawer of the check, and would thus render a negotiable instrument non-negotiable.

The attempt of the country banks, so-called, to accomplish this result by legislation has broken down in North Carolina and may be expected to

do so elsewhere. See *Farmers & Merchants Bank* v. *Federal Reserve Bank*, 183 N. C. 546, 112 S. E. 252, now before this Court for review on writ of certiorari, Docket No. 823.

(3)

The defendants cannot be required to submit to any order of injunction merely because it may be framed in accordance with their expressed purposes and is therefore harmless. The decree must declare the very right of the cause.

There is no suggestion in the evidence that the plan which the defendants propose to adopt will not be adhered to. Under the plan proposed the objecting non-member banks will be given the same privileges in the matter of exchange as are given to member banks (R., 182, 183, 186). There is not the slightest ground for questioning the good faith of the defendant bank. An order of injunction should not be made merely because the party complaining fears that he may be injured at some future time. *Sargent* v. *Ohio M. R. Co.*, 1 Hardy (Ohio) 52; *Mumford* v. *Rock Springs Grazing Assn.*, 261 Fed. 842; *In re Penn Development Co.*, 220 Fed. 222, 224-5. An injunction can issue only where an actual case of threatened injury has been made out. *Selma Water Co.* v. *City of Selma*, 154 Fed. 138, 142; *Whalen* v. *Dalashmutt*, 59 Md. 250.

Neither is there any reason for granting an injunction because the party against whom the injunction will run will not be prejudiced or hampered by its prohibitive force. *Dunn* v. *Bryan*, Ir. R. 7 Eq. 143; *S. S. White Dental Mfg. Co.* v.

Mitchell, 188 Fed. 1017. In such a case the defendant has a right to a dismissal of the complaint.

The plaintiffs, in the court below, laid some stress upon an alleged change of front on the part of the defendants with regard to the proposed methods of check collection. Plaintiffs apparently maintain that in the answer the defendants admitted an intention to demand cash and cash only, and that not until the answers to the interrogatories were filed did the defendants express willingness to accept drafts at par in lieu of cash.

With all due respect, we desire to point out that the defendants' answer specifically denied the allegations charging intended demands for payment in cash only. Paragraphs 46, 49 and 50 of the complaint (R., 15, 16, 17) allege that the defendants intend to require payment in currency when presenting checks for collection over the counter. This allegation the defendants denied in paragraph 46-A of their answer (R., 35), while in paragraphs 49-A and 50-A thereof it is explicitly stated that the defendants' only purpose in presenting checks for payment across the counter will be to collect such checks in the regular course of business (R., 36, 37). As the receipt of available exchange at par may be upon occasion as satisfactory for purposes of check collection as the receipt of cash, the answer cannot be construed as an admission of an intention to demand cash only. At the trial, question arose as to the issue raised in this connection. It was then that the defendants, without waiving their unquestionable legal right to payment in currency, offered the amendment of January 12, 1922, in order to

clear up any possible ambiguity as to their intentions. Prior to filing the answer, the question of the methods contemplated was not raised, since the case went up on a demurrer to the bill.

When offered an opportunity to remit at par by mail or express at the expense of the Federal Reserve Bank of Atlanta, the plaintiffs have peremptorily refused, and have elected to stand upon their naked legal rights in so doing. When the Federal Reserve Bank proposes to resort to the only method of collection remaining to it and demand payment in full over their counters, the plaintiff banks object and insist that the Federal Reserve Bank shall accept something less than the full amount or return the check to its origin. In short, although it is their own refusal to remit by mail which drives the Federal Reserve Bank to their counters, the plaintiffs would have this insistence upon their alleged right to deduct exchange, on the one hand, wipe out *all* right of the Federal Reserve Bank to collect, on the other.

IV.

There was no error in the rulings of the Trial Court.

(1)

The Trial Court properly denied the petition for intervention.

During the trial of the case a petition for intervention was filed by some seven State banks, all of which are located in districts other than the Sixth District, asking that they be made parties

plaintiff to the suit. This petition the Court denied.

Intervention under Section 37 of the New Equity Rules (1912) must be predicated upon an "interest in the litigation" in question, and there can be no "interest" in an equity suit unless it may be said that the decree entered will directly affect the interest of the petitioners. *Consolidated Gas Company* v. *Newton*, 256 Fed. 238 (affirmed C. C. A. 260 Fed. 1022 and remanded for dismissal 253 U. S. 219), citing and following *Donovan* v. *Campion* (C. C. A.), 85 Fed. 71, and Street: Federal Equity Practice, Vol. I, Sec. 507; see also, Foster: Federal Practice (6th Ed.), Sec. 258. Any decree which may be entered in this case can affect only banks located in the Sixth Federal Reserve District; consequently it cannot be said that the intervening petitioners, located as they are in districts other than the Sixth Federal Reserve District, have an "interest" in the litigation herein.

Furthermore, the so-called "right" to intervene lies entirely within the discretion of the trial court. *City of New York* v. *New York Telephone Company*, October Term, 1922, Docket No. 588, decided March 12, 1923; *Consolidated Gas Co.* v. *Newton, supra; In re Engelhard*, 231 U. S. 646; *Ex parte Leaf Tobacco Board of Trade*, 222 U. S. 578; *Credits Commutation Company* v. *U. S.*, 177 U. S. 311, 317; *Ex parte Cutting*, 94 U. S. 14. There is nothing in the record to show that this discretion was abused. The ruling of the trial court refusing to grant the petition of intervention should not be disturbed.

(2)

The Trial Court properly admitted the answers of the defendants to the interrogatories propounded to them under Equity Rule 58.

Of the written interrogatories propounded by the plaintiffs to the defendants under Equity Rule 58, numbers 1 to 316 inclusive, were addressed jointly to the four individual defendants, while interrogatories numbers 317 to 352 were addressed specifically to the individual defendant whose answer was desired. The defendants, under their individual oaths, made answer jointly to each of the interrogatories addressed to them jointly (R. 198, 276). The plaintiffs object to the admission of these joint answers in evidence upon the grounds (1) that the answers were joint and not several, (2) that Rule 58 required each of the defendants to answer the questions propounded severally, and (3) that the answers of each of the defendants should have been separately signed and filed by him.

Neither the spirit nor the letter of Rule 58 requires that interrogatories propounded to several persons jointly be answered separately in separate documents. The rule prescribes:

> "Each interrogatory shall be answered separately and fully, and the answers shall be in writing under oath, and signed by the party or corporate officer interrogated."

In other words, each question propounded must be answered separately and fully. There is nothing in the rule which precludes joint answers to interrogatories propounded jointly, so long as each question is answered separately. A require-

ment such as that for which the plaintiffs contend would be most cumbersome and require unnecessary duplication. Where, as here, the information asked for is equally in the possession of the persons interrogated, and their answers naturally are identical, it cannot be considered that the rule requires useless repetition in a separate set of answers for each individual. In this connection, the Circuit Court of Appeals said (R., 478):

> "What the quoted provision forbids is the making of one answer a response to more than one interrogatory. It does not forbid several persons to whom an interrogatory is propounded joining in the making of one separate answer thereto. The provision does not require the duplication or multiplication of answers to an interrogatory when the parties interrogated desire to make the same answer thereto."

At the trial, the defendant Wellborn and the defendant Adelson both testified on the stand that they accepted the answers to the interrogatories propounded to them as their individual and corporal statements as to the facts of the case, and adopted them as their sworn testimony (R., 177, 186). These answers in any event are now properly a part of the evidence in the case for all purposes.

(3)

The Trial Court properly excluded the testimony offered purporting to show the activities of other Federal Reserve Banks in other districts.

At the trial the plaintiffs tendered certain testimony, both oral and in the form of written

depositions, to show certain alleged acts done by other Federal Reserve Banks in other districts in putting into effect part clearance in those districts, contending that such testimony was admissible as establishing the methods which the defendant bank intended to adopt in collecting checks at par in the Sixth District. The defendants objected to the admission of such testimony on the ground that it was *res inter alios acta*, and the Court excluded it. There was no error in so doing.

It is elementary that the admissibility of evidence depends upon its relevancy to the issues raised by the pleadings, i. e., to the matter in dispute between the parties in controversy. Whenever testimony does not, naturally and logically, tend to establish a fact in issue, it is irrelevant and should be excluded. *Jones: Evidence*, Sec. 135. The complaint in the instant case alleges that the defendant bank intends to do certain acts within its district which will injure the plaintiff banks. The defendants deny that they intend to do any acts within the Sixth District of which the plaintiffs can legally complain. Thus the issue presented by the pleadings is the legality of the defendants' proposed acts within the Sixth District, as such acts may affect the plaintiffs. The plaintiffs do not complain of acts by the defendant bank in other districts, nor of acts by other Federal Reserve Banks within the Sixth District. The matter in dispute is confined to an alleged threatened wrong by the defendant bank to the plaintiff banks arising from threatened acts within the Sixth District.

On such an issue, testimony of what other Federal Reserve Banks did in other districts is clearly

irrelevant. It is a cardinal rule of evidence that a party cannot be affected by the words or acts of others with whom he is in no way connected and for whose doings he is in no way responsible. *Sharpless Separator Co.* v. *Skinner* (C. C. A.), 251 Fed. 25; *Trenton Oil Cloth etc. Co.* v. *Munroe* (C. C. A.), 218 Fed. 370; *Kerbaugh* v. *Gray* (C. C. A.), 212 Fed. 716; *Cogan Co.* v. *Hughes*, 145 Ga. 5, 88 S. E. 418; *Jeffries* v. *Pitts* (Ala.), 75 So. 959; *Jones: Evidence*, Section 140. As was said by a well known authority on evidence:

> "It would be manifestly unjust to admit (acts of third parties), since the conduct of one man under certain circumstances or towards certain individuals, varying as it will necessarily do according to the motives which influence him, the qualities he possesses and his knowledge of the character of those with whom he is dealing, can never afford a safe criterion by which to judge of the behavior of another man similarly situated." *Stark: Evidence*, 3rd Ed., 58, 59.)

The several Federal Reserve Banks are entirely independent, one from the other. They are distinct and separate corporations, each with its own board of directors and executive officers. Each has exclusive jurisdiction over its own district. One bank is not responsible for, nor has it any control over, the operations or activities of the other banks. The Federal Reserve Board has supervisory power over all the twelve Federal Reserve Banks, but the Federal Reserve Act in Section 4 thereof expressly provides that each Federal Reserve Bank "shall be conducted under the supervision and *control* of a board of directors". (Italics ours.) Thus, each bank is supreme

in its own province, subject only to the supervision of the Federal Reserve Board. Under these circumstances these twelve banking corporations are as separate and distinct one from the other as any other corporations. What the Federal Reserve Bank of Boston does in the Boston district has no probative force in determining what the Federal Reserve Bank of Atlanta intends to do in the Atlanta district. The words of the English text writer Stephens are directly in point:

> "You are not to draw inferences from one transaction to another which is not specifically connected with it merely because the two resemble each other. They must be linked together by the chain of cause and effect in some assignable way before you can draw your inference." (*Reynolds: Stephens Dig. Ev.*, p. 20, Note 6.)

But the plaintiffs rely upon the allegation of conspiracy between the several Federal Reserve Banks, as set forth in the amended bill of complaint, to link up the activities of other banks with those of the defendant bank. In the first place, there is not a scintilla of evidence in the record to establish the existence of such a conspiracy. The Federal Reserve Board, acting pursuant to the provisions of the Federal Reserve Act, inaugurated a general policy of par clearance. The entire testimony of record, however, goes to show that the execution of that policy in each district rested in all its details exclusively with the individual Federal Reserve Bank (R. 205, 209, 296, 301), and that there was no common plan or agreement whatsoever between the several banks to use the same methods of collection (R. 201, 205). The element of conspiracy is entirely lacking.

But the plaintiffs point to the statement made by one of the defendants in a letter, in which it was said, "The twelve Federal Reserve Banks are uniting in their efforts to bring about the establishment of a national par list, and rapid strides are now being made in that direction." This statement certainly cannot warrant the conclusion that the Federal Reserve Banks have entered into a conspiracy to injure non-member banks throughout the country at large. It is only natural that every one of the twelve banks should endeavor to establish universal par clearance within its respective district when that policy was inaugurated by the Federal Reserve Board and they were directed to carry it out. If the mere concurrent execution of the policy of universal par clearance constitutes a conspiracy among the several Federal Reserve Banks, then every policy promulgated by the Board and carried out by the several banks must constitute a conspiracy. Such a conclusion is, of course, absurd. In fact, as the Circuit Court of Appeals said in the prior proceedings on demurrer (269 Fed. 4, 11):

> "The Federal Reserve Banks of other districts have no power to act upon the petitioners or the intervenors. Their jurisdiction in that respect is confined to their own districts. Being without power to injure the complaining banks, they could not be members of a conspiracy against such banks."

But even if a conspiracy could be said to exist between the several Federal Reserve Banks, the acts of Federal Reserve Banks in other districts directed against non-member banks in those districts would not be admissible to establish the intended acts of the defendant bank within the

Sixth District. Non-member banks in the Sixth District cannot be injured by the methods of check collection in the Eighth District, nor can non-member banks in the Eighth District be injured by the methods of collecting checks employed by the defendant bank in the Sixth District. Acts of other banks affecting totally different complainants are not relevant on the issue here, even in the event of a conspiracy.

This is not the case of a common plaintiff suing for a tort in State A, and offering in evidence the acts of a co-conspirator in State B. There the relevancy rests upon the logical sequence that if a conspirator defrauds the plaintiff in State B, a co-conspirator will attempt to defraud the same plaintiff in a similar manner in State A. The instant case does not present this situation, for the persons injured (that is, the non-member banks in different districts) are entirely unconnected in interest, one with the other. The fact that a conspirator has acted in a certain manner toward X is not legally relevant on an issue as to how a co-conspirator will act toward Y. As the Circuit Court of Appeals very pertinently said when the case was before it on demurrer (269 Fed. 4, 12):

> "That other Federal Reserve Banks had taken coercive steps against state banks in their districts to enforce the par clearance policy, as charged on hearsay information in the amended bill, has no bearing on the cause of action relied upon by appellants in this case."

The allegation of conspiracy adds nothing to the plaintiffs' contentions.

Conclusion.

In conclusion, we respectfully submit that no error was committed by the Court below and that the appeal should be dismissed.

Respectfully submitted,

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ROBERT S. PARKER,
Counsel for Defendants.

JOHN W. DAVIS,
MONTGOMERY B. ANGELL,
Of Counsel.

Office Supreme Court, U. S.
FILED
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WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 717.

AMERICAN BANK AND TRUST COMPANY, *et al.*,
Appellants,

vs.

FEDERAL RESERVE BANK OF ATLANTA, *et al.*,
Appellees.

MOTION AND PETITION TO ADVANCE.

HOLLINS N. RANDOLPH,
ROBERT S. PARKER,
Counsel for Appellees.

JOHN W. DAVIS,
MONTGOMERY B. ANGELL,
of Counsel for Appellees.

Supreme Court of the United States

OCTOBER TERM, 1922.

AMERICAN BANK AND TRUST COMPANY, *et al.*, Appellants, against FEDERAL RESERVE BANK OF ATLANTA, *et al.*, Appellees.	No. 717.

MOTION TO ADVANCE.

SIRS:

PLEASE TAKE NOTICE that upon the annexed petition and upon the transcript of record filed herein the undersigned will move this Court at the October Term, 1922, thereof, to be held in the Capitol at the City of Washington, District of Columbia, on the 15th day of March, 1923, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order directing that the argument in this case be advanced and that the same be set down for a day certain to be fixed by the Court.

Dated, New York, March 13, 1923.

Yours, &c.,

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4

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SUPREME COURT OF THE UNITED STATES 7

OCTOBER TERM, 1922.

AMERICAN BANK AND TRUST COMPANY, *et al.*, Appellants, against FEDERAL RESERVE BANK OF ATLANTA, *et al.*, Appellees.	No. 717.

PETITION ON MOTION TO ADVANCE CASE. 8

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of the appellees, Federal Reserve Bank of Atlanta, *et al.*, respectfully shows as follows:

I. This case comes before this Court pursuant to an appeal taken by the appellants herein, American Bank and Trust Company, *et al.*, from a decision of the United States Circuit Court of Appeals for the Fifth Circuit affirming a decree 9 entered in the District Court of the United States for the Northern District of Georgia on March 25, 1922, denying a petition for injunction, except as to certain minor matters, against the appellees herein, defendants below.

II. It involves the right of the Federal Reserve Bank of Atlanta, acting under and in pursuance of the provisions of the Federal Re-

10 serve Act, to undertake to collect at par within its District all checks deposited with it, whether such checks are drawn upon so-called member banks or non-member banks. These proceedings were instituted by certain so-called country banks created under the laws of the State of Georgia. The bill was filed in January, 1920. A demurrer was entered and the demurrer was argued before the District Court in March, 1920. On April 29, 1920, the District Court dismissed the complaint for want of equity. That decree was subsequently affirmed by the United States Circuit Court of Appeals for the Fifth Circuit on November 19,
11 1920 (269 Fed. 4), but upon appeal to the Supreme Court of the United States, the decree of the District Court was reversed on May 16, 1921, and the case remanded for trial on the merits (256 U. S. 350). An answer was duly filed and on January 5, 1922, the case came on for trial. After a full hearing the District Court entered a decree dismissing the complaint (280 Fed. 940), which on appeal was affirmed by the United States Circuit Court of Appeals for the Fifth Circuit (284 Fed. 424). The plaintiffs below thereupon took an appeal to this Court from the decision of the Circuit Court of Appeals. This appeal involves an interpretation of the Federal
12 Reserve Act, particularly Sections 13 and 16 thereof, and the right of the Federal Reserve Bank, pursuant to the provisions of the Federal Reserve Act, to undertake to collect at par all checks deposited with it for collection regardless of the class of banks upon which such checks are drawn.

III. The questions involved are of great public interest and national importance. It is essen-

tially a test case. The case involves, not alone 13
the interests of the particular parties to this litigation, but the interests of the people of the United States in general. Certain aspects of the questions presented have already been before this Court on the demurrer proceedings, and at that time the case was advanced in view of its public importance and the seriousness of the questions involved. The questions raised have been the subject of litigation since early in January, 1920, and it is essential that the controversies growing out of this litigation should be settled expeditiously and without delay.

WHEREFORE your petitioners respectfully pray 14
that this honorable court will grant the motion to advance this case on the calendar of this honorable Court.

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